

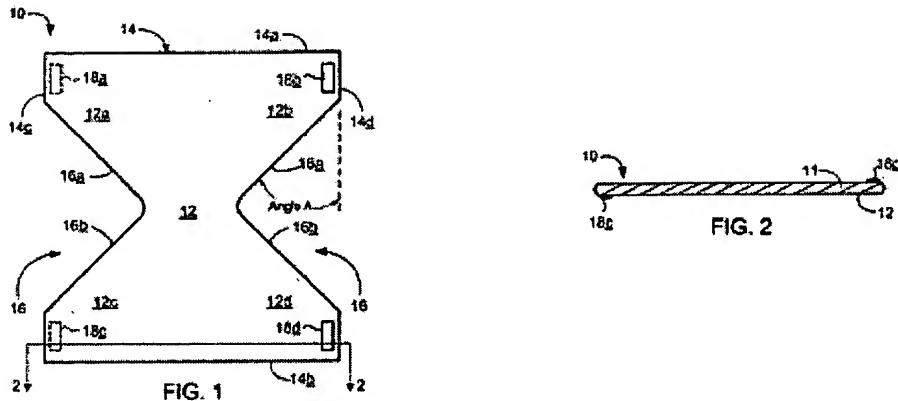
## **REMARKS**

The following remarks are responsive to the final Office action dated March 21, 2005. Prior to this amendment, claims 1-10 were pending in the present application. In the Office action, claims 1-4 and 6-10 were rejected under 35 U.S.C. § 102(e), and claim 5 was rejected under 35 U.S.C. § 103(a). In this amendment, Applicant has amended claims 1 and 6-10 and has presented new claims 11 and 12. In view of the remarks presented below and the accompanying Request for Continued Examination, Applicant respectfully requests reconsideration of the application under 37 C.F.R. § 1.114 and allowance of claims 1-12.

### **Rejections under 35 USC § 102**

Claims 1-4 and 6-10 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sheikh, U.S. Patent No. 6,589,272 (hereinafter "Sheikh"). Applicant respectfully traverses these rejections, and respectfully submits that Sheikh fails to disclose the thermal pack apparatus of independent claim 1.

Amended claim 1 of the present application recites, in pertinent part, "an enclosed shell ... at least partially filled with a thermal material; wherein the thermal material is sealed within the shell and disposed between the outer and inner panels." Figures 1 and 2, reproduced below, illustrate thermal material 11 sealed within the shell 12.



When viewed in combination, Figs. 1 and 2 illustrate that shell 12 envelopes thermal material 11. Figure 1 shows shell 12 on a first surface of thermal pack 10. Cross-sectional Fig. 2 shows that shell 12 continues onto a second, opposing surface of thermal pack 10, so as to circumscribe or seal the thermal material 11 between two surfaces, or panels, of the shell. Accordingly, thermal material 11 is sealed within the shell 12 between the outer and inner panels of thermal pack apparatus 10.

Sheikh discloses a thermal pack retention device. As disclosed, the retention device of Sheikh is configured to retain a thermal pack, or cold pack in a desired location on a user's body part. As described in col. 2, lines 23-50, and shown in Fig. 5 reproduced below, the Sheikh retention device includes a body 60, formed of a resilient sheet material, and at least one hole, sized to retain a cold pack 12 shown in Fig. 1a.

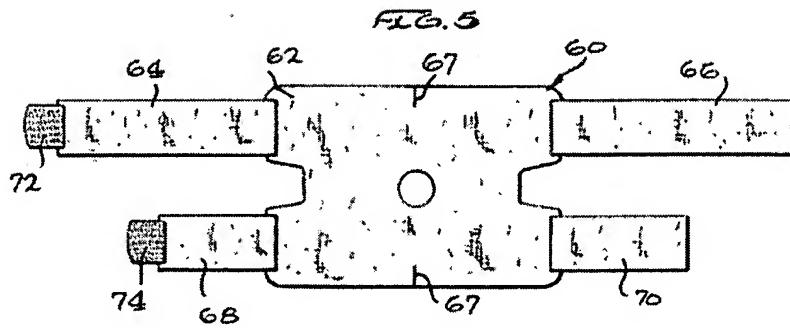
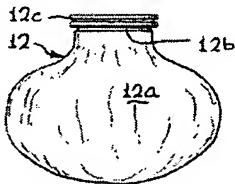


FIG. 1a



The Sheikh retention device body may be molded at seams 67 to form a pocket in which cold pack 12 may be retained, as further discussed at col. 4 lines 44-54.

In contrast to the claims of the present application, Sheikh does not disclose a thermal pack having a shell and thermal material sealed within the shell. In the most recent Office Action, the Examiner stated that Sheikh does not disclose a shell in the form of a closed surface boundary, wherein the closed surface has both an outer and an inner surface and wherein the thermal material is stored within the closed surface boundary of the shell. Accordingly, in light of the amendment to claim 1, Applicant respectfully submits that Sheikh fails to disclose each element recited in claim 1.

Additionally, amended claim 1 further recites that the shell includes a narrow neck region formed by opposing substantially v-shaped notches. Applicant respectfully submits that Sheikh fails to disclose such a configuration. The cut-outs in the retention

device disclosed in Fig. 5 of Sheikh are semi-hexagonal rather than v-shaped. The vertical length of the semi-hexagonal cut-out fails to disclose a v-shaped notch and is not configured to act as a living hinge as recited in claim 1. The living hinge enables the thermal pack apparatus of claim 1 to follow the natural movement of the joint around which the apparatus is position during use. The semi-hexagonal cut-out will not be able to bend in a similar manner without deformation and bulging of the retention device. Therefore, Applicant respectfully submits that the semi-hexagonal cut-out fails to disclose the recited v-shaped notches and living hinge configuration.

Furthermore, amended claim 1 recites that the shell has first and second portions each having opposing side segments at least partially filled with thermal material and adapted to fasten to each other. The side segments at least partially filled with thermal material and adapted to fasten to each other allow the thermal pack apparatus of claim 1 to conveniently apply therapeutic thermal material to a greater amount of surface area of the limb being treated without the complication of straps and bands that serve no therapeutic function. As seen in Fig. 5 of Sheikh and the remaining figures thereof, Sheikh's retention device utilizes straps 64, 66, 68, 70 to secure the retention device to the body part. Accordingly, Applicant respectfully submits that Sheikh fails to disclose the recited side segments partially filled with thermal material and adapted to fasten to each other.

For at least the above reasons, claim 1 is not anticipated by Sheikh. Therefore, Applicant requests that the rejection of claim 1 under 35 U.S.C. §102(e) be withdrawn.

In addition, as claims 2-4 and 6-10 are dependent on claim 1 and incorporate the elements thereof. The amendments to claims 6-10 conform these claims to the language of amended claim 1. As claims 2-4 and 6-10 incorporate the elements of claim 1, Applicant requests that the rejection of these claims be withdrawn as well.

In this amendment, Applicant has presented new claim 11 dependent from claim 1. Applicant submits that the subject matter of claim 11 is supported in the application as filed. Furthermore, Applicant respectfully submits that claim 11 is allowable as dependent from amended claim 1. Additionally, Applicant has presented new independent claim 12. Applicant respectfully submits that claim 12 is allowable for many of the reasons discussed above in connection with claim 1. As Applicant believes claims 11 and 12 to be allowable, and in light of the accompanying Request for Continuing Examination, Applicant requests examination and favorable treatment of claims 11 and 12.

### **Rejections under 35 USC § 103**

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheikh in view of Cramer, U.S. Patent No. 6,096,067 (hereinafter "Cramer"). Applicant respectfully traverses this rejection. To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all of the claim limitations. MPEP 2143.03, page 2100-133. Claim 5 depends from and includes all of the elements of claim 1, including the claim element of "an enclosed shell ... at least partially filled with a thermal material; wherein the thermal material is sealed within the shell and disposed between the outer and inner panels.

As discussed above in reference to claim 1, Sheikh fails to disclose, teach, or suggest a thermal apparatus including a shell that is at least partially filled with a thermal material that is sealed within the shell. Cramer fails to add to the disclosure of Sheikh with respect to these recited elements. There is no disclosure, teaching, or suggestion of a shell at least partially filled with a thermal material that is sealed within the shell in either of these references, alone or in combination.

Cramer discloses a thermal body pad including a thermal material which may consist of silica gel. Assuming, *arguendo*, the Examiner's contention that it would be obvious to one skilled in the art to use this silica gel as the thermal agent in Sheikh, such a combination would result in silica gel being used in place of the cold source in the Sheikh's cold pack 12. When in use, the silica gel within the cold pack would be positioned between a user's body part and the retention device. Therefore, as discussed above, the silica gel would be entirely outside of the retention device body 60 rather than sealed within the retention device body. The proposed combination does not disclose, teach, or suggest a shell at least partially filled with silica gel that is sealed within the shell. For at least this reason, Applicant respectfully submits that claim 5 is not obvious over Sheikh in view of Cramer, and that claim 5 is in condition for allowance.

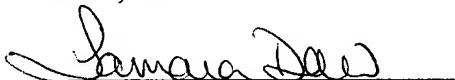
In light of the Request for Continued Examination submitted herewith, Applicant respectfully requests entry of the amendments and remarks presented herein. Applicant believes that, in view of the above remarks, this application is in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any



way advance prosecution of the application, please contact the undersigned attorney of record.

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on June 20, 2005.

  
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Respectfully submitted,

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